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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,082	01/21/2005	Ulrich Clemens Dahn	LU 6039 (US)	7572

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INTELLECTUAL PROPERTY
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EXAMINER	
NUTTER, NATHAN M	
ART UNIT	**PAPER NUMBER**
1711	

MAIL DATE	DELIVERY MODE
05/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/522,082	DAHN ET AL.	
	Examiner	Art Unit	
	Nathan M. Nutter	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11 and 13-15* is/are rejected.

7)☒ Claim(s) *12* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *03-05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 12 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 12, drawn to a product being either a "film, fiber or molding" cannot properly depend from a method claim. The recitation therein of "comprising a propylene polymer composition as claimed in claim 10" is erroneous since claim 10 is not a composition claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 and 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are:

Claim 1 recites in the preamble "(a) process for preparing propylene polymer compositions in an at least two-stage process." This is not clear that any one composition is being made since there is nothing to indicate any mixing or inter-polymerization, such as would be expected from reactors in sequence or parallel. The only requirements recited are compositional, in nature, and the recitations of claims 1-7 are drawn to a process. In claims 8, 9, 13, 14 and 15, the recitation in the section prior

to the addition of the third component are likewise vague since there is nothing to provide a single product. Claim 10, applicants recite essentially a product-by-process but, as pointed out above, fail to provide sufficient guidance to produce. Claim 11, drawn to a process for "producing films, fibers or moldings" does not provide any steps drawn to making any of a fiber, film or molding.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5 and 10-12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 7,196,140 (Dahn et al). Although the conflicting claims are not identical, they are not patentably distinct from each other because the methods recited in the instant claims and in the patent require the same constituents and are produced in a two-stage

process, wherein the first stage may produce a homopolymer of propylene. The reaction conditions are claimed, as well.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5 and 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Dahn et al (US 7,196,140), newly cited.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in

the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

The reference teaches a method, as recited in the patent, that requires the same constituents and employ a two-stage process, wherein the first stage may produce a homopolymer of propylene.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as obvious over Cecchin et al (WO 01/19915), newly cited.

The reference to Cecchin et al teaches the manufacture of a polyolefin blend composition produced in a multistage process wherein the first polymer may be a homopolymer of propylene and the second polymer may be an ethylene/alpha olefin (claim 3). Note the Abstract wherein the first stage polypropylene has a melt flow index as recited in claim 2. Further, note page 1 (lines 19 et seq.) for the process as shown in claims 1, 2, 3 and 6. The reaction conditions of gas phase (claim 4), temperature and pressure (claim 5) are shown at page 7 (line 21 et seq.). Note page 13 for the production of articles. At page 4 (lines 22 et seq.) where the use of multiple stages, i.e. "at least three polymerization steps" is contemplated, which at least renders obvious the recitations of claims 7, 8, 14 and 15.

The reference fails to show the specific MFR of the polymer blend, yet the range recited is common for this type of polymer blend. Further, any manipulation thereof, which is not shown by the claims, would have been within the skill of an artisan with an

eye toward end-use. As such, the skilled artisan would have a high level of expectation of success following the teachings of the reference.

Claims 1-6 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schweier et al (US 4,454,299), newly cited.

The patent to Schweier et al teaches the manufacture of a polypropylene/polyethylene blend produced in multiple polymerization zones that may be connected in series. Note Example 1 at columns 4 and 5. The first stage polypropylene may be a homopolymer (claim 3), and the steps may be performed in the gas phase (claim 4). Note the Examples for the variation of temperature and pressure (claim 5). A skilled artisan knows how to vary temperature, pressure and residence times in polymerization chambers to achieve desired results; e.g. brevity of residence time, etc.. It is assumed that a polymer composition having a high impact strength would be suitable for molding operations.

The reference fails to show the specific MFR of the first stage homopolymer polypropylene. The ranges for the composition, per se, are shown in Example 1, 15 g/10 minutes, is embraced by that recited herein. As such, the skilled artisan would have a high level of expectation of success following the teachings of the reference.

Claims 1, 2, 4-6 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seelert et al (US 2002/0019488), newly cited.

The reference to Seelert et al teaches the manufacture of a polypropylene composition wherein the first stage may be a homopolymer of propylene and the second stage an ethylene/C_4-C_{20}-alk-1-ene, as herein recited. The MFR of the homopolypropylene is "from 0.1 to 100 g/10 min." as in claim 2. Note the Abstract and paragraph [0022]. Further, note paragraphs [0047] to [0051] wherein it is taught the use of the gas phase (claim 4), the polymerization conditions (claim 5) and the concept of claim 6. The reference teaches the manufacture of films, fibers and moldings at paragraph [0201].

The reference fails to show the specific MFR of the polymer blend, yet the range recited is common for this type of polymer blend. Further, any manipulation thereof, which is not shown by the claims, would have been within the skill of an artisan with an eye toward end-use. As such, the skilled artisan would have a high level of expectation of success following the teachings of the reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

13 May 2007